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SUBJECT: ENCOURAGING TIP PROGRESS IN VIETNAM

REF: A. Moeling-Dunlap email 7/26/04 B. Hanoi 1190

1. (SBU) Summary: To provoke the changes necessary to graduate Vietnam off the TIP Watch List, the USG should encourage greater protection of workers while staying out of the sensitive debate over the character and desirability of the labor export sector in Vietnam. We should push hard on areas where there is consensus on what Vietnam can do (ratification of UN Protocols, signing of a trafficking MOU with Cambodia, creation of labor export regulations that protect workers, increasing prosecutions of traffickers, increasing training for anti-TIP officers, improving coordination to protect victims, establishing a national plan of action to prevent trafficking, for example) and take a wait-and-see approach on areas where there is disagreement about what Vietnam can or should do (specific instructions regarding the restructuring of the labor code.) In terms of tactics, to prevent a counterproductive Vietnamese reaction to U.S. "demands" we should avoid presenting our recommendations as a quid-pro-quo. End summary.

2. (U) Embassy has reviewed a draft copy of the proposed TIP action plan for Vietnam (ref A) and has the following specific comments and recommendations, keyed to the text.

3. Embassy response to emailed proposed G/TIP action items for Vietnam to be removed from the TIP Tier 2 Watch List:

BEGIN POINT-BY-POINT REVIEW

4. (SBU) Proposed:

-- Pass a comprehensive law against labor trafficking. This law should define involuntary servitude and debt bondage.

Embassy response:

The process of passing new legislation in Vietnam is incredibly complex and time-consuming, requiring a multi-year process of consensus-building. In addition, Vietnam completed (and passed) a comprehensive new labor law in 2003; it is therefore at the bottom of the legislative priority list. It would be more realistic for us to suggest that the GVN create comprehensive regulations on the export of labor to prevent trafficking. The regulations are necessary to implement the new labor law, and achievable in a reasonable timeframe. As such we would be asking the GVN to do something within its power.

5. (SBU) While Vietnamese law does not refer specifically to debt bondage or involuntary servitude, Article 71 of the Constitution of 1992 guarantees the "inviolability of the person and the protection of the law with regard to his life, health, honor and dignity" and Article 123 of the Penal Code sets out criminal penalties for those who "illegally arrest, hold in custody or detain other persons." This is sufficient in Vietnam to criminalize slavery and debt bondage.

We recommend changing this action to:

-- Create comprehensive regulations on the export of labor to prevent trafficking and the abuse of workers.

6. (SBU) Proposed:

-- Provide protection for victims of labor trafficking, including the protection from retribution by the offending labor company or employer.

Embassy response:

The GVN response to this is likely to be "we do this already." Under the penal code, retribution is illegal and the victim has the right to lodge a complaint with the Ministry of Public Security or the police if his rights or freedom have been violated. The degree to which this is an effective remedy is a function of the health of the overall Vietnamese justice system, and not of the GVN's willingness to tolerate trafficking. The GVN is likely to challenge us to provide examples or evidence that labor trafficking victims have been subject to retribution, and at the moment we will have a hard time providing that. The only support post has seen for the "retribution" accusation has been the claims that Daewoosa victims were sued to recover the amount

of their settlement checks and that they believe they have been denied employment as a result of the case. As reported Ref B, an Embassy inquiry (with the cooperation of the Ministry of Labor and the Hanoi Lawyers Association) has demonstrated conclusively that the Daewoosa victims who were the defendants in a government-supported civil suit to recover the amount of their settlement awards had received interest-free loans against the settlement amount in excess of the actual amount and had pledged the settlements themselves as collateral for those loans. The labor companies were allowed to bring the suit only after the victims refused to honor the terms of the initial promissory note.

17. (SBU) Regarding the claims of labor trafficking victims being unable to find employment after returning to Vietnam, this problem is not unique to the victims and should not be considered retribution. A July, 2003 case study on labor export in Vietnam done under the auspices of the UNDP Asia Pacific Regional Initiative on Trade, Economic Governance, and Human Development, which surveyed households in a rural district of Ho Chi Minh City (Cu Chi) with a high level of participation in temporary overseas employment (TOE) revealed that only five percent of TOE participants found employment as "workers" after returning home. The rest either returned to the fields, took up previous jobs as public officials, engaged in self-employed handicrafts or trading, or (in 25 percent of cases) were unemployed. The 25 percent figure is in notable contrast to the 5 percent of respondents who indicated that they were unemployed before going overseas to work.

We recommend removing this action from the list.

18. (SBU) Proposed:

-- Provide greater protection for Vietnamese workers sent abroad by state-controlled labor export companies, including:  
an adequate mechanism for addressing worker complaints and assuring them they will not be punished for raising complaints (vice the current practice of deporting "troublemakers");  
in contracts with state-owned companies: eliminate up-front fees for "processing" and transportation that are most often a contributing factor to debt bondage; and the elimination or reduction in the financial penalties for failure to complete the duration of the contract (suggest using a bonus/incentive system instead).

Embassy response:

The reform of Vietnam's enterprise laws is opening up a great number of industries - including labor export - to the private sector. We do not want protection for workers limited to those sent abroad by state-owned companies, so we propose dropping "state owned".

19. (SBU) Embassy agrees with recommending the creation of an adequate mechanism for addressing worker complaints. We recommend removing the specific reference to "punishment for raising complaints" and the reference to "deporting troublemakers." The reason for this is that the GVN is working hard to combat the perception in key labor consuming countries (particularly Taiwan and Korea) that Vietnamese workers are an immigration risk. The current terms of labor export contracts with Taiwanese and Korean companies and Vietnamese workers stipulate that the workers may remain in Taiwan and Korea only as long as they are filling the position specified in the company specified in the contract. According to Andy Bruce, IOM's Chief of Mission in Vietnam, dissatisfied workers do not have the option to move to another company within Korea or Taiwan - if they do so, they become illegal workers in those countries.

110. (SBU) This system seriously reduces the power of individual workers, giving them the option to either accept the current situation, return to Vietnam, or become illegal workers in Taiwan or Korea. For Vietnam, accepting these terms is the price of competing with Thailand, the Philippines, Indonesia, and China for labor export markets. The deportation of workers who are involved in disputes with their employers overseas is a host-country decision and not within the GVN's power to change. We should leave it out of our action plan.

111. (SBU) Regarding contracts with labor export companies (again, we should eliminate "state-owned"), we are concerned that we are involving ourselves too deeply in a complicated debate over the nature of labor export in general. A number of experts, including the drafters of the UNDP study mentioned above and the drafters of a confidential January, 2004 study by the French Government, have noted the burden on workers that the high cost of securing a contract to go overseas represents. The studies suggest - but do not conclude - that the debt that workers take on encourages them to break their labor export contracts in favor of more

lucrative market-rate jobs once they reach the destination country. The result of this is to expose the workers to the risks of living in a country illegally and to aggravate tensions between the host governments and the GVN, which is then criticized for allowing its citizens to illegally immigrate and break labor contracts.

12. (SBU) We have discussed this phenomenon with a variety of interlocutors, including such recognized trafficking experts as IOM and UNICEF, and the unanimous conclusion is that while these fees may create problems for workers and the labor export system, they do not represent a causal factor for labor trafficking.

13. (SBU) One reason for this is that the debt that workers take on in order to purchase a TOE contract is not held by or connected to the labor export company or to the future employer. The UNDP study determined that 60 percent of households with people engaging in labor export sell assets to raise the necessary funds. 67.5 percent borrow money from relatives at an average rate of 6.12 percent per year, and 30 percent borrow from banks at a rate of 12.12 percent per year. Loans from the labor export company or the employer are not listed as financial sources for participating in TOE at all. ("Other sources" is a category that might represent loans from the labor export company or the employer. However, it includes only 2.56 percent of households.) Our conclusion is that while indebtedness may be a factor limiting the options of Vietnamese laborers abroad, neither the employers nor the labor export companies control that indebtedness. The laborers have limited financial options, but are not in a condition of debt bondage.

14. (SBU) We note that in all of our discussions about the high cost of securing TOE, none of our interlocutors have mentioned trafficking as a consequence. As the French put it, "it is because of the high cost of leaving to work abroad that most Vietnamese workers leave the enterprise to take illegal but better-paying work. It is said that if the cost of leaving were less, there was no corruption and the selection could be done in a transparent manner - perhaps a lottery system - more Vietnamese workers would respect the contract."

15. (SBU) In fact, in our increasingly extensive review of the situation of Vietnamese export laborers, the only case of labor exploitation rising to the level of trafficking that we can find occurred more than four years ago - the Daewoosa case. Other cases involving abuse of the labor export system involve defrauding workers, stealing money from them, sending them to export labor markets without actual jobs, abandoning them overseas, absconding with their salaries, or misrepresenting the actual nature of work. We have seen no cases - reported or confirmed - involving involuntary servitude of Vietnamese workers since the Daewoosa case of 1999.

16. (SBU) What we have seen is a systematic effort by the GVN to clean up the labor export system and find a way to achieve the benefits of labor export (hard currency remittances, reduced demand for social services, lower unemployment, and technology transfer) while minimizing the negative impacts on workers. Mark Sidel, a professor of law at the University of Iowa and a severe critic of the existing labor export system in Vietnam, acknowledged this in a paper he gave at a 2003 legal reform conference, saying "at the central government level, many honestly do wish to maintain an appropriate, even just balance between law as the protector of rights under a marketizing system, and law as the facilitator and accelerator of that market growth." Sidel ultimately criticized the effectiveness of this effort (his central thesis was that corrupt local officials, police, and labor export companies profit handsomely from Vietnamese export labor) but did not dispute the central government's desire to minimize abuses.

17. (SBU) Considering the sensitive and fundamental nature of the debate over the balance between protecting workers and ensuring that contractual obligations with receiving countries are honored, and the fact that the current system has produced only one known trafficking case more than four years ago, we recommend changing this action to:

-- Provide greater protection for Vietnamese workers sent abroad by labor export companies, including:  
an adequate mechanism for resolving disputes between workers and labor export companies;  
reform of the system of fees and penalties paid by workers to minimize the financial pressure on workers that can lead to abusive situations.

18. (SBU) Proposed:  
-- Use existing laws to increase investigations, arrests, and prosecutions of traffickers.

Embassy concurs.

19. (SBU) Proposed:

--Train police and immigration officials, judges, and elected officials on trafficking issues and how to deal with victims of labor and sex trafficking. Incorporate trafficking in persons training at the Ministry of Public Security to train law enforcement officials. Provide information on how many officers received the training and on how the training is being implemented in the field.

Embassy recommends moving this entire action to the "consider for action" section vs. the "must do" section. We believe the GVN has already begun doing this in cooperation with the UNODC on a U.S.-funded project, and the recent expansion of the anti-trafficking special units to cover the entire country is a welcome development.

20. (SBU) Proposed:

-- Adopt a national action plan to combat trafficking in persons.

Embassy concurs.

Embassy also concurs with all "consider for action" areas, and recommends adding "Vietnam should ratify as soon as possible the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, of the UN Convention against Transnational Organized Crime."

21. (SBU) Tactically, we must ensure that the presentation to the GVN is not perceived as a USG ultimatum. If the action plan comes off as a threat to keep Vietnam on the Watch List or downgrade it to tier 3 if certain benchmarks are not met, the GVN will reject it. Even if the actions suggested are positive ones the GVN is inclined to carry out anyway, the offices and individuals working on TIP issues cannot afford to be seen to be giving in to USG demands. The GVN has demonstrated that it is independently committed to tackling the TIP problem, and we can present the action plan as a USG recommendation of areas on which the GVN can focus its efforts. If we try to use it as a "stick" to compel GVN action, we will certainly be disappointed.  
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